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E.O. 12958: N/A

TAGS: ELAB KCRM KFRD KWMN PHUM PREF AF
SUBJECT: AFGHANISTAN'S 2008 TIP QUESTIONNAIRE RESPONSE

GENERAL OVERVIEW

11. (SBU) Is the country a country of origin, transit, and/or destination for internationally trafficked men, women, or children? Provide, where possible, numbers or estimates for each group; how they were trafficked, to where, and for what purpose. Does the trafficking occur within the country's borders? Does it occur in territory outside of the government's control (e.g. in a civil war situation)? Are any estimates or reliable numbers available as to the extent or magnitude of the problem? What is (are) the source(s) of available information on trafficking in persons or what plans are in place (if any) to undertake documentation of trafficking? How reliable are the numbers and these sources? Are certain groups of persons more at risk of being trafficked (e.g. women and children, boys versus girls, certain ethnic groups, refugees, etc.)?

Afghanistan is a country of origin, transit, and destination for trafficked children and women. According to the International Organization on Migration (IOM), the Ministry of Labor and Social Affairs (MLSA), and the Attorney General's office, as a country of origin, Afghanistan serves as a source for children who are trafficked into Iran, Pakistan, and Gulf countries such as Saudi Arabia and Oman. As a transit country, Afghanistan is reported to be used to send women and children from Tajikistan to Pakistan and Iran, primarily for labor but also for sex; however, no statistics exist. There were unconfirmed reports of Afghan women being trafficked into Pakistan and Iran. In some cases, men were trafficked into Iran for labor.

There were also undocumented reports of Afghanistan's being a destination country for women being trafficked from China and Iran (unconfirmed) for sex or from Pakistan as drug couriers. In 2006, IOM conducted a program funded by PRM to assist 150 victims of trafficking. Ninety-six of these victims were women who had been trafficked to Afghanistan from China for sexual exploitation. In 2007, they found that it was difficult to reach out to these women since they have gone further underground. Most were working in Kabul at establishments purporting to be "Chinese restaurants" but which effectively acted as brothels. IOM suggested that the women voluntarily left China seeking work in another country but were not told they would be sent to Afghanistan and were coerced to stay and work as prostitutes upon their arrival. The Ministry of Interior, however, believes most Chinese prostitutes come willingly and knowingly.

Internal trafficking also remains an issue in Afghanistan, but no statistics are available. Child labor and forced begging occurs in Afghanistan's largest cities. Significant numbers of children are rumored to be trafficked from provinces such as Baghlan into Kabul for labor. A 2006 Afghan Independent Human Rights Commission (AIHRC) report estimated that there were approximately 60,000 child laborers in Kabul, most of whom migrated from other provinces to work to help support their families. There were no reliable numbers

for 2007. There were scattered reports of young boys being trafficked internally for sex, especially in the northern provinces of Badakhshan, Baghlan, Balkh, Faryab, Jowzjan, Kunduz, Samangan, Sar-e-pol, and Takhar. The MLSA has reports of 11 boys being trafficked internally for sexual exploitation during 2007. These boys were abducted and forced to work as dancers performing in front of private parties of men. In the southern provinces along the border with Pakistan, there were reports of powerful insurgent and militia leaders abducting young boys or forcing families to turn over their sons to be used as sexual objects.

Women and girls continued to be exchanged to settle debts or resolve conflicts. The AIHRC received 34 reports nationwide of women or girls being exchanged to settle family disputes in 2007. The AIHRC did not receive any reports during 2008 of women and girls being sold by their families for financial gain. In some rural areas, underage girls were sometimes forced to marry much older men to settle debts, or their families are forced by powerful local leaders to give them away. If the girls were too young to consummate the marriage, they could be used as household servants instead.

¶12. (SBU) Please provide a general overview of the trafficking situation in the country and any changes since the last TIP Report (e.g. changes in direction). (Other items to address may include: What kind of conditions are the victims trafficked into? Which populations are targeted by the traffickers? Who are the traffickers/exploiters? Are they independent business people? Small or family-based crime groups? Large international organized crime syndicates? What methods are used to approach victims? (Are they offered lucrative jobs, sold by their families, approached by friends of friends, etc.?) What methods are used to move the victims (e.g., are false documents being used?). Are employment, travel, and tourism agencies or marriage brokers involved with or fronting for traffickers or crime groups to traffic individuals?

There was no evidence of any major change to trafficking trends since last year's report. Government officials are developing a better understanding of the various types of trafficking. While political will to address trafficking was more apparent in 2007, the government lacked capacity to adequately handle the issue. During the year, the Ministry of Interior established an office within the Attorney General's office in each province to deal with trafficking issues. These offices were not always adequately staffed, but represent a commitment and a degree of progress. The government and local NGOs were dependent on funding and training from international donors to combat trafficking.

Little information existed on the conditions into which victims were trafficked either internally or abroad, methods for transporting them to other countries, or the average profile of traffickers. Parents in poor, rural parts of Afghanistan often willingly sent their children with traffickers in the hopes that the child can gain employment and send money home. Poor agrarian provinces hard hit by years of drought and war and which attract little international assistance are understood to be a common source of trafficked children.

There continued to be unconfirmed reports of trafficking rings, particularly in the northern provinces. Victims from the north are allegedly trafficked to Pakistan through the border crossing point of Torkham, in the Eastern border province of Nangarhar. Victims from the South were trafficked into Pakistan via Afghanistan's extremely porous border with the provinces of Helmand, Kandahar, Khost, Paktika, and Zabul. Men, women and children trafficked into Pakistan and Iran for labor were often trafficked through the province of Nimroz in the southwest, due to the isolation and lack of border control along that part of the Iran-Afghanistan-Pakistan border. The Islam Qala border checkpoint in Herat was another site used for trafficking into Iran.

There continued to be rumors of child trafficking for organs, but no one (including the Ministry of Interior) was able to produce any evidence whatsoever to support the rumors.

¶13. (SBU) Which government agencies are involved in anti-trafficking efforts and which agency, if any, has the lead?

Ministry of Interior has primary responsibility for reporting and

investigating cases and, in theory, has the most direct contact with victims. The Attorney General's Office is responsible for keeping statistics on prosecutions, and convictions. The Ministry of Labor and Social Affairs plays an informal lead role in and effort to create strategy to combat trafficking. The Ministry of Women's Affairs addresses trafficking of women and female children through policy and advocacy and, in February 2008, launched a USAID-supported education and awareness building program for communities, schools, shuras, and NGOs. The program will operate through provincial level Departments of Women's Affairs in provinces deemed most vulnerable.

The Ministry of Foreign Affairs is responsible for addressing efforts against international trafficking. The Ministry of Justice drafted a law that criminalizes trafficking, which is to be reviewed by the Cabinet and introduced in Parliament in 2008. The Ministry of Labor and Social Affairs receives the most international assistance (funding and capacity building) for anti-trafficking efforts, primarily from UNICEF, but this is only for child trafficking issues. In 2007, this ministry developed a detailed strategy to protect vulnerable children from trafficking and girls from forced/early marriage through a variety of prevention activities, especially at the sub-national level and in provinces of greatest risk. The Ministry is now seeking funding from USAID to establish a secretariat to manage and monitor its strategy.

14. (SBU) What are the limitations on the government's ability to address this problem in practice? For example, is funding for police or other institutions inadequate? Is overall corruption a problem? Does the government lack the resources to aid victims?

The government recognizes the need to address trafficking and has shown political will, but thirty years of war imposed on an already poor and very traditional country are reflected in ministries and civil institutions that are undeveloped and severely understaffed and resourced even as they face a backlog of demands and requirements. The government, which is combating an insurgency which claimed the lives of over a thousand police officers in 2007, lacks police to dedicate to counter-trafficking. There is no consensus on which ministry should take the lead on the issue of trafficking, and, as a result, there is inadequate coordination.

Funding to train police, judges, and prosecutors on identifying and investigating trafficking cases remains inadequate to address the need. Some elements of the border and highway police are understood to be complicit in trafficking activities, although there were no confirmed reports of this. The government has no capacity to assist victims, though it supports assistance provided to trafficking victims by international and national NGOs.

15. (SBU) To what extent does the government systematically monitor its anti-trafficking efforts (on all fronts -- prosecution, victim protection, and prevention) and periodically make available, publicly or privately and directly or through regional/international organizations, its assessments of these anti-trafficking efforts?

The government does not currently have the capacity to systematically monitor its anti-trafficking efforts; however, with the assistance of foreign embassies and INGOs, it is beginning to build infrastructure. Various ministries have responsibility for prosecution and prevention, but there was no coordination.

INVESTIGATION AND PROSECUTION OF TRAFFICKERS:

16. (SBU) Does the country have a law specifically prohibiting trafficking in persons--both for sexual and non-sexual purposes (e.g. forced labor)? If so, please specifically cite the name of the law and its date of enactment and provide the exact language of the law prohibiting TIP and all other law(s) used to prosecute TIP cases. Does the law(s) cover both internal and external (transnational) forms of trafficking? If not, under what other laws can traffickers be prosecuted? For example, are there laws against slavery or the exploitation of prostitution by means of force, fraud or coercion? Are these other laws being used in trafficking cases? Please provide a full inventory of trafficking laws, including non-criminal statutes that allow for civil penalties against alleged trafficking crimes, (e.g., civil forfeiture laws and laws against illegal debt).

The Ministry of Justice, with the assistance of IOM, drafted an anti-trafficking law in 2007. It is under review by the Cabinet and will be sent to Parliament in 2008. Traffickers are currently prosecuted under laws designed to address kidnapping.

The relevant laws criminalizing kidnapping are as follows. The quality of translation is poor; however, they are from official translations published in Afghan law books.

Penal Code

Article 356:

A person who takes away or hides a newborn baby from person who have legal rights over him, or changes him with another infant, or untruthfully relates him to some other than his mother, shall be sentenced in the light of circumstances to medium imprisonment.

Article 418:

A person who, himself/herself or through another, kidnaps a child, not yet seven years old, or someone who cannot look after himself, or leaves at large one of the persons mentioned in an uninhabited area, shall be sentenced.

Article 419:

If, as a result of commitment of the crimes specified under article 418 of this law, some organ of the child or the person (kidnapped) is defected or lost, the offender shall be punished in accordance with the provisions of deliberate laceration or if the child or person (kidnapped) dies, the offender shall be punished in accordance with the provisions of deliberate murder.

Article 420:

¶1. A person who, himself or through another, kidnaps, without coercion or fraud, a child not yet eighteen years old, shall be sentenced. 2. If the kidnapped child is a girl, the offender shall be sentenced to long imprisonment, not exceeding ten years.

Article 421:

¶1. A person who, himself or through another, kidnaps without coercion or fraud, a child not yet eighteen years old, shall be sentenced. 2. If the kidnapped child is a girl, the offender shall receive the maximum anticipated punishment of the above paragraph.

Article 423:

If the acts specified under article 420 and 421 of this law are committed by a person who has influence or authority over the person against whom the crime has been committed, or if the former is charged with the responsibility of raising the latter, the offender shall be sentenced.

Article 425:

A person who carries off a girl, who is sixteen years or over, at her own will from her parents' residence for the purpose of lawfully marrying her, shall not be deemed as having committed an act of kidnapping.

Article 515:

A person who holds as hostage another person through threat, coercion or any other means, shall be sentenced to long imprisonment.

¶7. (SBU) What are the prescribed penalties for trafficking people for sexual exploitation? What penalties were imposed for persons convicted of sexual exploitation over the reporting period? Please note the number of convicted sex traffickers who received suspended sentences and the number who received only a fine as punishment.

No specific law has been defined for trafficking for sexual exploitation.

¶8. (SBU) Punishment of Labor Trafficking Offenses: What are the prescribed and imposed penalties for trafficking for labor exploitation, such as forced or bonded labor and involuntary servitude? Do the government's laws provide for criminal punishment -- i.e. jail time -- for labor recruiters in labor source countries who engage in recruitment of laborers using knowingly fraudulent or

deceptive offers that result in workers being trafficked in the destination country? Are there laws in destination countries punishing employers or labor agents in labor destination countries who confiscate workers' passports or travel documents, switch contracts without the worker's consent as a means to keep the worker in a state of service, or withhold payment of salaries as means of keeping the worker in a state of service? If law(s) prescribe criminal punishments for these offenses, what are the actual punishments imposed on persons convicted of these offenses? Please note the number of convicted labor traffickers who received suspended sentences and the number who received only a fine as punishment.

There were no laws providing for punishment of labor traffickers. Article 49 of the Afghan constitution prohibits forced labor.

¶9. (SBU) What are the prescribed penalties for rape or forcible sexual assault? How do they compare to the prescribed penalties for crimes of trafficking for commercial sexual exploitation?

Article 429 of the Penal Code addresses rape cases and sexual assault cases. This article provides for no more than seven years imprisonment in a rape case, unless aggravating circumstances exist.

It states: "(1) A person who through violence, threat, or deceit, violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years. (2) In the case where the person against whom the crime is committed is not eighteen years old, or the person who commits the crime is one of the persons specified under the paragraph 2 of article 427 of this law, the offender shall be sentenced to long imprisonment, not exceeding ten years." The Koran does not specifically mention a punishment for rape, but Shar'ia law, which Afghanistan's laws draw from, historically has treated it as a form of adultery punishable by stoning. In practice, female rape victims are sometimes considered to have committed a crime themselves and are sentenced accordingly. The penalty for sex trafficking has not been defined.

¶10. (SBU) Is prostitution legalized or decriminalized? Specifically, are the activities of the prostitute criminalized? Are the activities of the brothel owner/operator, clients, pimps, and enforcers criminalized? Are these laws enforced? If prostitution is legal and regulated, what is the legal minimum age for this activity? Note that in many countries with federalist systems, prostitution laws may be under state or local jurisdiction and may differ among jurisdictions.

Prostitution was illegal but existed. Under Shar'ia law, prostitution was also considered a form of adultery and was punishable by lashing for unmarried prostitutes and/or unmarried clients of prostitutes. For clients and/or prostitutes who were married, Shar'ia law stated the punishment was public death by stoning. There have been no cases in which this punishment was carried out according to the Attorney General's office. The Penal Code did not specifically mention prostitution or punishment for prostitution. Courts normally considered prostitution as a form of adultery. Judges usually referred to Article 427, which says that, "A person who commits adultery...shall be sentenced to long imprisonment." The law does not provide specific sentencing guidelines. Article 430 deals with the crime of "instigation to debauchery" and provides a minimum three years imprisonment. The available translation was imperfect, but Article 430 apparently states that: (1) A person who instigates a male or female, not eighteen years old to debauchery or a person who instigates another to acquire a profession pertaining to debauchery, or assists another in this respect, shall be sentenced to medium imprisonment, not less than three years and; (2) if the person committing the crime is one of the persons specified under the paragraph 2 of article 427 of this law, or the act has been performed for the purpose of acquiring benefit, the offender shall be sentenced to long imprisonment, not exceeding ten years.

¶11. (SBU) Has the government prosecuted any cases against human trafficking offenders? If so, provide numbers of investigations, prosecutions, convictions, and sentences and available. Please indicate which laws were used to investigate, prosecute, convict, and sentence traffickers. Also, if possible, please

disaggregate by type of TIP (labor vs. commercial sexual exploitation) and victims (children, as defined by U.S. and international law as under 18 years of age, vs. adults). Does the government in a labor source

country criminally prosecute labor recruiters who recruit laborers using knowingly fraudulent or deceptive offers or impose on recruited laborers inappropriately high or illegal fees or commissions that create a debt bondage condition for the laborer? Does the government in a labor destination country criminally prosecute employers or labor agents who confiscate workers' passports/travel documents, switch contracts or terms of employment without the worker's consent, use physical or sexual abuse or the threat of such abuse to keep workers in a state of service, or withhold payment of salaries as a means to keep workers in a state of service? Are the traffickers serving the time sentenced? If not, why not? Please indicate whether the government can provide this information, and if not, why not?

There were 255 arrests for TIP-related offenses in 2007. 49 of the arrests resulted in convictions. Sentences ranged from 5 to 12 years. The Attorney General's office was not able to provide specifics on which types of trafficking cases were most commonly prosecuted because they do not track such cases. Similarly, the Attorney General's Office does not have data on the average length of sentences and whether such sentences were carried out because it does not track this information. In 2007, according to the Ministry of Labor and Social Affairs, 6 children were repatriated from Saudi Arabia; 2 children were repatriated from Pakistan, and 11 children were internally trafficked for sexual exploitation. There were no data available on labor traffickers or their victims, as the government lacked the capacity to track the issue.

¶12. (SBU) Does the government provide any specialized training for government officials in how to recognize, investigate, and prosecute instances of trafficking? Specify whether NGOs, international organizations, and/or the USG provide specialized training for host government officials.

Working through IOM, the USG provided anti-trafficking training for border police, the judiciary and Afghan National Police. During the reporting period, 60 individuals received training. The government itself does not have capacity to offer such training. When conducted, such training is provided by international NGOs but not with any consistency.

¶13. (SBU) Does the government cooperate with other governments in the investigation and prosecution of trafficking cases? If possible, can post provide the number of cooperative international investigations on trafficking during the reporting period?

In theory, the government cooperates with investigation and prosecution, but there were no international investigations during the year.

¶14. (SBU) Does the government extradite persons who are charged with trafficking in other countries? If so, can post provide the number of traffickers extradited during the reporting period? Does the government extradite its own nationals charged with such offenses? If not, is the government prohibited by law from extraditing its own nationals? If so, what is the government doing to modify its laws to permit the extradition of its own nationals?

There were no extraditions of traffickers. Afghanistan has no extradition law, but Parliament is scheduled to consider one this year.

¶15. (SBU) Is there evidence of government involvement in or tolerance of trafficking, on a local or institutional level? If so, please explain in detail.

There were no reports of institutional involvement in trafficking by the government. The Ministry of Interior stated that no police officials have been arrested for involvement in trafficking. There are unconfirmed reports of corrupt Afghan National Police and Afghan Border Police officers being complicit in trafficking, but there was